

## Rules Relating to the Implementation of the Parenting Act 9-94

### 1. Information Dissemination

a. The State Court Administrator shall develop informational materials to give to all Clerks of the District Courts regarding the divorce process, a divorce timeline, parenting during and after divorce, the parenting plan, the mediation process and its availability, and resource materials. Such information will be included in the following four [brochures](#) :

" Divorce . . . and Beyond, Parenting in Nebraska "  
"Children and Divorce, How Parents Can Help "  
" No Fault Divorce "  
"The Parenting Plan "

In addition, local courts may provide supplemental information on community resources.

b. Upon the filing of any action in which the parenting of minor children is an issue, the Clerk of the District Court shall send or give the above information to the petitioner.

c. The Clerks of the District Courts shall send this informational material to the respondent with the service of process or when an address of respondent becomes known to the court. In cases of service by publication, or when an address is not provided, this requirement is waived.

d. The Clerks of the District Courts shall keep a record of all cases in which the above informational material has been disseminated. Documentation that material has been distributed to the parties shall be included in the case file.

e. In cases including guardianships of minors, termination of parental rights cases, petitions for support, or grandparent visitation cases, rules 1a through 1d do not apply.

### 2. Qualifications for Mediators

a. A mediator under the Parenting Act may be a court-based conciliation court counselor, or court-based mediator, a state mediation center mediator as established by the Office of Dispute Resolution, or a mediator in private practice.

b. A mediator under the Parenting Act shall meet the following standards:

(1) Mediators shall complete training requirements consistent with the Dispute Resolution Act including training in family mediation and, in addition, mediators shall complete training that has been approved or provided by the State Court Administrator to recognize domestic violence which will include screening guidelines and safety procedures for cases involving child abuse, spouse abuse or both, with advanced level training in the areas of child abuse and spouse abuse required every three years;

2) Mediators shall have a knowledge of the court system and procedures used in contested family matters;

(3) Mediators shall have a general knowledge of Nebraska family law, especially regarding custody, visitation, and support;

(4) Mediators shall have a knowledge of other resources in the state to which parties and children can be referred for assistance; and

(5) Mediators shall have a general knowledge of child development, clinical issues relating to children, the effects of marriage dissolution on children, parents, and extended families, and the psychology of families.

Note: The requirement for the domestic violence training provided or approved by the State Court Administrator shall be waived until December 31, 1994, for mediators meeting all other qualifications as set out in Rule 2 above.

c. No mediator who represents or has represented one or both of the parties or has had either of the parties as a client may mediate the case. If such services have been provided to both participants, mediation shall not proceed unless the prior relationship has been discussed, the role of the mediator has been made distinct from the earlier relationship, and the participants have been given the opportunity to fully choose to proceed. All other potential conflicts of interest shall be disclosed and discussed before the parties decide whether to proceed with that mediator.

d. Mediators used by the state mediation centers shall be annually evaluated by the Director of the State Office of Dispute Resolution.

### 3. Determining Cases Appropriate for Mediation

a. The case may be scheduled for mediation sessions if the case is determined not to involve child abuse, spouse abuse, or both; and if both parties voluntarily agree to mediation.

b. In determining if abuse is involved, screening guidelines shall be used that include:

(1) An initial telephone screening instrument;

(2) A first-session face-to-face interview with both parties;  
and

(3) Ongoing use of screening strategies during the mediation process.

### 4. Court Referrals and Costs for Mediation

a. A court may refer a case to court-based mediation or state mediation centers approved by the Office of Dispute Resolution.

(1) In cases referred to a court-based mediator, there is no cost to the parties and the court may state a date for the case to return to court which shall be no longer than 90 days from the date the order is signed unless the court grants an extension.

(2) In cases referred to state mediation centers approved by the Office of Dispute Resolution, mediation fees are based on a sliding scale which begins above the federal poverty guidelines. No one is denied services for an inability to pay.

b. In court-referred cases, the court may, if appropriate, order temporary support in order to meet the Nebraska Supreme Court rules for expedited process or case progression.

### 5. Mediators' Roles and Duties

a. The mediator shall impartially facilitate the mediation process in the development of a parenting plan by:

- (1) Informing the parties of the factors the court will consider;
- (2) Assisting the parties in assessing their needs and those of the minor child involved in the proceeding which could include involving the minor child in the mediation process if necessary or appropriate; and
- (3) Advising the parties that they should consult with an attorney regarding the plan.

b. Mediation shall be conducted in private.

c. Only a final agreement between the parties shall be examined in any judicial or administrative proceeding. All other communications shall not be disclosed with the exception that any disclosure of abuse made during the mediation process as defined in section [28-710](#) shall be timely reported to the district judge and an in-camera hearing shall be held to determine whether a report should be made pursuant to section [28-711](#) and if further investigation is merited.

#### 6. Reasons and Procedure to Terminate Mediation

a. The mediator shall terminate mediation if one or more of the following conditions exist:

- (1) Allegations are made of direct physical or significant emotional harm to party or a minor child that have not been heard and ruled upon by the court;
- (2) Either party desires to terminate mediation at any point in the process.

b. The mediator may terminate mediation if one or more of the following conditions exist:

- (1) There is no reasonable possibility that mediation will promote the development of an effective parenting plan;
- (2) Mediation will otherwise fail to serve the best interest of the minor child.

c. If mediation is not appropriate for the above reasons, the mediator shall so inform the court. Any additional statements shall not be prejudicial to either party.

## 7. Parenting Plan Agreements

a. The development of a Parenting Plan shall, at a minimum, attempt to accomplish the following:

- (1) Assist in developing a restructured family that meets all members' needs;
- (2) Provide for the minor child's physical care and maintain his or her emotional stability;
- (3) Provide for the minor child's changing developmental needs in a way to minimize future modifications to the plan;
- (4) Determine the authority and responsibility of each party with respect to the minor child;
- (5) Minimize the minor child's exposure to harmful parental conflict;
- (6) Encourage mutual appropriate participation by both parties in the minor child's activities;
- (7) Provide both parties equal access to the minor child's medical, dental, and school records;
- (8) Assist parties to articulate a visitation schedule acceptable if the other party is awarded custody of the minor child;
- (9) Encourage mutual discussion of major decisions regarding the minor child's education, health care, and religious upbringing;
- (10) Establish provisions for a healthy relationship between the minor child and each party; and
- (11) Encourage remediation prior to litigation.

b. The Parenting Plan shall, at a minimum, contain:

- (1) Custody and visitation arrangements;
- (2) Apportionment of time with each party including the minimum court-ordered time the minor child shall spend

with each parent and a schedule which designates in which home the minor child shall reside on given days of the year including specified religious and secular holidays, birthdays of family members, vacations, and other special occasions;

(3) Procedures established by each party for making decisions regarding day-to-day care and control of the minor child while the minor child is residing with the party;

(4) Provisions for a remediation process which provides each parent a means to resolve future conflicts regarding parental functions; and

(5) Other issues regarding parenting functions but excluding all other issues such as property division and financial issues or child support.

c. Either party may authorize emergency medical procedures in situations affecting the immediate health of the child regardless of other provisions in the plan.

d. When an agreement on a parenting plan is reached:

(1) The mediator shall report that result to the court and to counsels for the parties prior to the hearing date or a time that has been designated by the court.

(2) The mediator shall submit the plan to the parties' legal counsels who shall submit the plan for inclusion in the decree under section [42-120](#) or [42-364](#) .

(3) The court may, after a hearing, approve the plan, modify and approve the plan as modified, or reject the plan and order the parties to develop a new plan. If approved by the court, the parenting plan shall be included in the final decree or order.

e. If an agreement is not reached, the mediator shall report that fact to the court prior to the hearing. If an agreement is not reached in a case that has been referred to a court-based mediator, the mediator shall report that fact to the court no later than 90 days from the date the order is signed unless an extension is granted.

f. The Parenting Act shall not apply in any action filed by a county attorney or authorized attorney pursuant to his or her duties under sections

42-512 to 43-512.18, and [43-1401](#) to 43-1418, the Income Withholding for Child Support Act, and the Uniform Interstate Family Support Act for purposes of the establishment of paternity and the establishment or enforcement of child and medical support. A county attorney or authorized attorney shall not participate in the development of or court review of a parenting plan under the Parenting Act.